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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10 KAMORRIE RANDLE, ) Case No. 2:14-cv-02611-DSF-JC  
11 Petitioner, )  
12 v. ) MEMORANDUM OPINION AND  
13 R. GROUNDS, ) ORDER DISMISSING ACTION  
14 Respondent. )  
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17 **I. BACKGROUND AND SUMMARY**

18 In an order dated November 15, 2018 (“November Order”), this Court  
19 granted petitioner’s motion to stay this action for petitioner to exhaust Grounds  
20 Three through Five in the pending Petition for Writ of Habeas Corpus (“Petition”)  
21 and directed him, beginning thirty (30) days from the date of the November Order  
22 and every sixty days thereafter, to file a status report detailing the status of the state  
23 court proceedings to exhaust his unexhausted claims. (Docket No. 36). The  
24 November Order further expressly cautioned petitioner that the failure to meet any  
25 of the time requirements contained in the November Order would result in an order  
26 vacating the stay, *nunc pro tunc*, might preclude consideration of the unexhausted  
27 claims and might result in the dismissal of this action for lack of prosecution.

28 On December 14, 2018, petitioner filed his initial status report notifying the

1 Court that he was “in the process of having his Petition for Writ of Habeas Corpus  
2 prepared for the California Supreme Court” and would “continue to expedite his  
3 efforts to exhaust Grounds three through five.” (Docket No. 37). On February 15,  
4 2019, April 15, 2019, and June 17, 2019, petitioner filed further status reports all of  
5 which reflect that petitioner “has no new information” concerning the filing of his  
6 Petition for Writ of Habeas Corpus in the California Supreme Court and is  
7 continuing in his efforts to exhaust Grounds Three through Five. (Docket Nos. 40-  
8 42).

9 As petitioner’s foregoing status reports did not reflect that petitioner had yet  
10 filed a petition for writ of habeas corpus in the California Supreme Court and  
11 provided no details regarding petitioner’s asserted efforts to exhaust his  
12 unexhausted claims, let alone details which would establish reasonable diligence in  
13 doing so, the Magistrate Judge, on June 21, 2019, issued an Order to Show Cause  
14 (“First OSC”) directing petitioner to show cause why the stay should not be lifted  
15 and why the unexhausted grounds should not be dismissed. (Docket No. 43). On  
16 July 29, 2019, petitioner filed a Response to the First OSC. (Docket No. 44).

17 As petitioner did not file status reports or otherwise communicate with the  
18 court for several months thereafter, the Magistrate Judge, on December 20, 2019,  
19 issued another Order to Show Cause (“Second OSC”). (Docket No. 47). The  
20 Second OSC reminded petitioner that the November Order required petitioner  
21 regularly to file status reports – every sixty days – and pointed out that, even  
22 assuming the court construed petitioner’s July 29, 2019 Response to the First OSC  
23 to constitute petitioner’s fifth status report, petitioner was several months late with  
24 his sixth status report which would have been due no later than September 27,  
25 2019 (sixty days from the filing of the July 29, 2019 Response to the First OSC).  
26 The Second OSC therefore ordered petitioner, by not later than January 13, 2020,  
27 to show cause, if there be any (1) for his failure timely to file the sixth status  
28 report; and (2) why this action should not be dismissed based on petitioner’s failure

1 to file the required sixth status report, to comply with the November Order, and/or  
2 petitioner's failure to prosecute.

3 On January 13, 2020, petitioner filed a Response to the Second OSC.  
4 (Docket No. 48). On January 27, 2020, he filed his sixth status report. (Docket  
5 No. 49). In light of the foregoing, the Magistrate Judge, on February 18, 2020,  
6 acknowledged receipt of petitioner's Response to the Second OSC and the sixth  
7 status report and again reminded him that he must continue to file status reports  
8 every sixty days as set forth in the November Order, and that his next status report  
9 was due by March 27, 2020. (Docket No. 50).

10 On March 24, 2020, petitioner signed, and on March 30, 2020, the Clerk  
11 received and filed petitioner's seventh status report. (Docket No. 51). Petitioner's  
12 eighth status report was therefore due by not later than May 29, 2020 – sixty days  
13 after March 30, 2020.

14 As petitioner did not file an eighth status report or otherwise communicate  
15 with the Court by the May 29, 2020 deadline, the Magistrate Judge, on July 8,  
16 2020, issued another Order to Show Cause ("Third OSC"). (Docket No. 52). The  
17 Third OSC set out the foregoing procedural history and ordered petitioner, by not  
18 later than July 28, 2020, to show cause, if there be any (1) for his failure timely to  
19 file the eighth status report; and (2) why this action should not be dismissed based  
20 on petitioner's failure to file the required eighth status report, to comply with the  
21 November Order, and/or petitioner's failure to prosecute. Although such deadline  
22 expired more than four weeks ago, to date, petitioner has not responded to the  
23 Third OSC, filed his eighth status report or otherwise communicated with the court  
24 since his submission of the seventh status report in March.

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As discussed below, this action is dismissed due to petitioner's unreasonable failure to prosecute and petitioner's failure to comply with the November Order and the Third OSC.

## II. PERTINENT LAW

It is well-established that a district court may *sua sponte* dismiss an action where a plaintiff has failed to comply with a court order and/or unreasonably failed to prosecute. See Link v. Wabash Railroad Co., 370 U.S. 626, 629-33 (1962); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir.) (as amended), cert. denied, 506 U.S. 915 (1992); see also McKeever v. Block, 932 F.2d 795, 797 (9th Cir. 1991) (district court may *sua sponte* dismiss action "only for an unreasonable failure to prosecute") (citations omitted).<sup>1</sup>

In determining whether to dismiss an action for failure to prosecute or failure to comply with court orders, a district court must consider several factors, namely (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to defendant/respondent; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives. See In re Eisen, 31 F.3d 1447, 1451 (9th Cir. 1994) (failure to prosecute); Ferdik, 963 F.2d at 1260-61 (failure to comply with court orders).

Dismissal is appropriate under the foregoing analysis "where at least four factors support dismissal . . . or where at least three factors 'strongly' support dismissal." Hernandez v. City of El Monte, 138 F.3d 393, 399 (9th Cir. 1998) (citations omitted).

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<sup>1</sup>Pursuant to Rule 12 of the Rules Governing Section 2254 Cases in the United States District Courts ("Habeas Rules"), the Federal Rules of Civil Procedure, to the extent they are not inconsistent with any statutory provisions or the Habeas Rules, may be applied to habeas proceedings. Applying Rule 41(b) of the Federal Rules of Civil Procedure (and its attendant interpretative case law) to this habeas proceeding is not inconsistent with the Habeas Rules or any statutory provision.

### 1    **III.    DISCUSSION AND ORDERS**

2            First, the Court has reviewed the Third OSC, agrees with the Third OSC, and  
3 finds that the Third OSC was properly issued for the reasons discussed therein.<sup>2</sup>

4            Second, as the above-referenced procedural history reflects, petitioner has  
5 repeatedly been notified of his obligation to comply with the November Order and  
6 to file regular status reports, has repeatedly failed timely to do so, and has entirely  
7 failed to file the requisite eighth status report. Most recently, the Third OSC again  
8 afforded petitioner an opportunity to explain his failure to file a requisite status  
9 report and to show cause why this action should not be dismissed based upon his  
10 failure to comply with the November Order and to prosecute this action. It further  
11 cautioned petitioner that his failure timely to respond to the Third OSC may result  
12 in the dismissal of this action based upon his failure to comply with the Court's  
13 Orders and/or to prosecute this action. Petitioner has not responded.

14           Finally, upon consideration of the five factors noted above, the Court finds  
15 that petitioner's unreasonable failure to prosecute his case and failure to comply  
16 with the OSC warrant dismissal as four factors support dismissal, and at least three  
17 factors strongly support dismissal. The first two factors – the public's interest in  
18 expeditiously resolving this litigation and the Court's interest in managing the  
19 docket, weigh in favor of dismissal. The Court cannot hold this case in abeyance  
20 indefinitely awaiting petitioner's response to the Court's directives.<sup>3</sup> The third  
21 factor, risk of prejudice to respondent, also weighs in favor of dismissal since a  
22 presumption of injury arises from the occurrence of unreasonable delay in  
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24           <sup>2</sup>The Court likewise has reviewed and agrees with the First and Second OSCs and finds  
25 that they were properly issued for the reasons discussed therein.

26           <sup>3</sup>Although not the basis for the instant dismissal, it is noteworthy that petitioner's most  
27 recent status report filed in March 2020 – more than a year after the Court stayed this action in  
28 November 2018 so that petitioner could exhaust his unexhausted claims by presenting them to  
the California Supreme Court – reflects that petitioner has still not filed a petition for writ of  
habeas corpus with the California Supreme Court. (Docket No. 51 at 1).

1 prosecuting an action. Anderson v. Air West, Inc., 542 F.2d 522, 524 (9th Cir.  
2 1976). The fourth factor, the public policy favoring disposition of cases on their  
3 merits, is greatly outweighed by the factors in favor of dismissal discussed herein.  
4 Finally, as petitioner has already been cautioned of the consequences of his failure  
5 to prosecute and his failure to comply with the November Order and the Third  
6 OSC, has been afforded the opportunity to do so, and has not responded, no  
7 sanction lesser than dismissal without prejudice is appropriate.

8 IT IS THEREFORE ORDERED that this action is dismissed without  
9 prejudice based upon petitioner's unreasonable failure to prosecute and his failure  
10 to comply with the November Order and the Third OSC, and that Judgment be  
11 entered accordingly.

12 IT IS FURTHER ORDERED that the Clerk serve a copy of the instant  
13 Memorandum Opinion and Order Dismissing Action and the Judgment on  
14 petitioner and counsel for respondent.

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16 IT IS SO ORDERED.

17 DATED: August 27, 2020

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19 HONORABLE DALE S. FISCHER  
20 UNITED STATES DISTRICT JUDGE  
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